

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/593,832	Applicant(s) KUROZUMI ET AL.
Examiner COLETTE NGUYEN	Art Unit 1793

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 January 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 04 January 2010. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: PTO-892.

/Melvin Curtis Mayes/
Supervisory Patent Examiner, Art Unit 1793

/COLETTE NGUYEN/
Examiner, Art Unit 1793

Continuation of 11, does NOT place the application in condition for allowance because: The remarks filed on 01/04/2010 have been carefully considered but deem not persuasive for the following reasons:

Claims 1-16 pertain to a method of producing a perovskite titanium oxide compound by vapor phase. As discussed in the final rejection dated 07/02/2009, the method of claim 1 to 16 are unpatentable as obvious over Ohmori (PCT/JP99/06876) in view of Tanaka (PCT/JP00/05794). Ohmori teaches perovskite titanium oxide used as dielectric or piezoelectric material. The compounds can be formed from brookite crystalline or in combination with rutile and anatase. The process can be a vapor phase method, liquid sol method or the preferred hydrolysis method in an acidic solution. Tanaka discloses a method of producing titanium oxide compound with ultra fine particulate that have little aggregation and excellent dispersity. The claimed method of claims 1 to 16 as a whole would be obvious to an ordinary skill of the art at the time to the invention to try the vapor phase method of Tanaka to produce the perovskite titanium oxide of Ohmori to produce dielectric and piezoelectric compound with improvements with a certain degree of success as Ohmori does specify vapor phase method as one of the methods can be used. As the claimed process method has similar reactants, temperature, gas flow rate, particle distribution, particle sizes as the method of prior arts, the claimed methods are not new or novel and are obvious as stated.

Claims 17 to 32 pertain to the final product made with the process of claim 1. As the process is substantially similar as the process taught by Ohmori in view of Tanaka, the final product, in this case is the perovskite titanium oxide would be substantially the same with all the characteristics, explicit or implicit would be the same. As for the characteristic of ferroelectricity, on page 43 of the application, despite that the process is a vapor phase process, but there is no ferroelectricity exhibited (due to a low 10 % anatase phase). Ferroelectricity exhibits only at a 80% or higher of anatase which is not claimed. As evidence, Miyoshi (US6,485,701) demonstrate that oxide having perovskite structure demonstrate ferroelectricity when Titanium oxide of anatase are used, thus expected that titanium oxide having high amount of anatase form would exhibit ferroelectricity. In conclusion, the method and the product as claimed in claims 1 to 32 are remained rejected.